

STATE APPELLATE DEFENDER OFFICE (SADO) ***by Bill Bowerman, Chief Analyst***

Introduction

The Governor's fiscal year (FY) 1999-2000 budget recommendation includes a reduction of 15.0 FTEs/\$1,000,000 to the Appellate Public Defender Program. The FY 1998-99 budget included 61.5 FTEs and \$5,176,000. Indigent appellant counsel are either funded by the State through its Appellate Public Defender Program or paid for by local government through court appointments from the private bar. This article will provide perspective as to the potential impact the proposed reduction would have statewide, and by individual counties.

Background

The State Appellate Defender Office (SADO) was established in 1969 by the Michigan Supreme Court. Public Act 620 of 1978 provided statutory authorization for SADO. The Act created a seven-member Appellate Defender Commission to be responsible for:

- 1) Development of a system of indigent appellate defense services provided by SADO and locally appointed private counsel.
- 2) Development of minimum standards to which all indigent criminal defense appellate services must conform.
- 3) Compilation of a statewide roster of eligible attorneys willing to accept appointment to serve as criminal appellate defense counsel for indigents.
- 4) Provision of continuing legal education training program for SADO staff and private roster attorneys.

The minimum standards for indigent criminal appellate defense services were approved by the Michigan Supreme Court and made effective on February 1, 1982. The Appellate Defender Commission created the Michigan Appellate Assigned Counsel System (MAACS) in 1985 to provide training and maintain the roster of appointed counsel, and to coordinate assignments between the private bar and SADO. The Michigan Supreme Court requires trial courts to comply with MAACS regulations regarding selection of appellate assigned counsel. Along with its responsibilities for maintaining the roster of private bar attorneys and training, MAACS provides oversight and evaluation of roster attorney performance. Cases assigned from the list of roster attorneys are the financial responsibility of the counties.

SADO Statutory Requirements

Section 6(c) of Public Act 620 of 1978 provides that SADO will:

(c) Accept only the number of assignments and maintain a caseload which will insure quality criminal defense appellate services consistent with the funds appropriated by the state. However, the number of cases assigned to the appellate defender office shall not be less than 25% of the total criminal defense appellate cases for indigents pending before the appellate courts of this state. (emphasis added)

Due to the number of cases, case complexity, and budget limitations, SADO has not met the 25% statutory requirement over the last 13 years. Table 1 provides a history of SADO assignments as a percentage of statewide total appellate cases from 1986 through 1998.

Table 1

SADO APPELLATE ASSIGNMENTS			
Year	SADO	Total	Percent
1986	755	3,627	20.8%
1987	840	3,831	21.9
1988	889	4,230	21.0
1989	1,089	5,224	20.8
1990	934	5,550	16.8
1991	854	5,297	16.1
1992	1,015	6,469	15.7
1993	953	5,927	16.1
1994	917	5,047	18.2
1995	837	4,763	17.6
1996	763	4,287	17.8
1997	832	4,080	20.4
1998	948	3,984	23.8
Source: Michigan Appellate Assigned Counsel System			

While SADO has not met the 25% requirement based on the number of cases assigned, a review of complex cases shows that SADO handles a proportionately greater share of Level 3 cases. The statewide roster of attorneys compiled and maintained by MAACS divides attorneys into the three levels of qualifications. Level 1 attorneys may only represent a defendant who was convicted at a jury trial of an offense carrying a maximum sentence of five years or less, or by plea or at a waiver trial of an offense carrying a statutory maximum of 10 years or less. Level 2 attorneys only represent a defendant who was convicted at a jury trial of an offense carrying a statutory maximum sentence greater than five but not greater than 15 years, or by plea or at a waiver trial of an offense carrying a statutory maximum sentence greater than 10 years. Level 3 attorneys may represent defendants convicted at trial or by plea of any felony.

The State Appellate Defender Office has historically handled a higher percentage of the more complex (Level 3) cases than what would normally result from the ordinary rotation of assignments between SADO and the private bar. Supreme Court Administrative Order 1989-3 allows SADO to be assigned to cases out of sequence when the complexity or economic hardship the appeal would cause a county makes the selection of private counsel impractical. It is also possible that higher volume counties could shift the order in which assignments are processed, resulting in a larger proportion of Level 3 cases assigned to SADO. Based on data supplied by MAACS, while SADO handled 23.8% of total appellate assignments in 1998, SADO was assigned to 35.3% of the Level 3 assignments (Table 2).

Table 2

1998 APPELLATE ASSIGNMENTS			
	SADO	Total	Percent
LEVEL 1	310	1,620	19.1%
LEVEL 2	415	1,714	24.2
LEVEL 3	216	612	35.3
OTHER	7	38	18.4
TOTAL:	948	3,984	23.8%
Source: Michigan Appellate Assigned Counsel System			

Any reduction of capacity to SADO, whether it is done strictly by number of assignments or through a change in the percentage of Level 3 cases, will result in increased demands on counties. The impact on each county will vary based on the extent to which it currently relies on SADO. In 1997 SADO handled 20.4% of total appellate

assignments and 34.3% of Level 3 assignments. Table 3 shows the impact of SADO assignments on a circuit-by-circuit basis. The first three columns of data represent all appellate assignments, and the last three columns represent SADO's Level 3 assignments.

Table 3

1997 APPELLATE ASSIGNMENTS							
Circuit	County	All Assignments			Level 3 Cases		
		SADO	Total	Percent	SADO	Total	Percent
1st	Hillsdale	5	22	22.7%	3	3	100.0%
2nd	Berrien	25	126	19.8	4	13	30.8
3rd	Wayne	189	925	20.4	42	168	25.0
4th	Jackson	25	122	20.5	9	19	47.4
5th	Barry	2	22	9.1	0	2	0.0
6th	Oakland	89	436	20.4	40	97	41.2
7th	Genesee	40	235	17.0	16	33	48.5
8th	Ionia/Montcalm	8	45	17.8	1	2	50.0
9th	Kalamazoo	25	117	21.4	9	15	60.0
10th	Saginaw	20	69	29.0	5	24	20.8
11th	Alger/Luce/Schoolcraft	1	3	33.3	0	0	0.0
12th	Baraga/Houghton/ Keweenaw	2	5	40.0	0	0	0.0
13th	Antrim/Grand Traverse/Leelanau	11	46	23.9	1	3	33.3
14th	Muskegon	42	192	21.9	5	12	41.7
15th	Branch	1	2	50.0	1	1	100.0
16th	Macomb	40	215	18.6	4	18	22.2
17th	Kent	37	169	21.9	8	30	26.7
18th	Bay	8	42	19.0	1	2	50.0
19th	Benzie/Manistee	5	21	23.8	1	1	100.0
20th	Ottawa	18	60	30.0	3	9	33.3
21st	Isabella	6	25	24.0	0	0	0.0
22nd	Washtenaw	23	112	20.5	0	17	0.0
23rd	Iosco/Oscoda	4	21	19.0	0	1	0.0
24th	Sanilac	1	6	16.7	0	0	0.0
25th	Marquette	4	15	26.7	1	2	50.0
26th	Alcona/Alpena/ Montmorency/ Presque Ilse	5	23	21.7	0	1	0.0
27th	Newago/Oceana	5	22	22.7	0	2	0.0
28th	Missaukee/Wexford	5	26	19.2	1	2	50.0
29th	Clinton/Gratiot	11	51	21.6	1	3	33.3
30th	Ingham	21	129	16.3	4	17	23.5
31st	St. Clair	16	85	18.8	7	10	70.0
32nd	Gogebic/Ontonagon	0	2	0.0	0	0	0.0
33rd	Charlevoix	5	15	33.3	0	0	0.0
34th	Arenac/Ogemaw/ Roscommon	5	22	22.7	1	2	50.0
35th	Shiawassee	3	16	18.8	0	0	0.0
36th	Van Buren	1	8	12.5	1	2	50.0

1997 APPELLATE ASSIGNMENTS							
Circuit	County	All Assignments			Level 3 Cases		
		SADO	Total	Percent	SADO	Total	Percent
37th	Calhoun	21	116	18.1	15	20	75.0
38th	Monroe	17	62	27.4	4	11	36.4
39th	Lenawee	8	47	17.0	0	0	0.0
40th	Lapeer	1	5	20.0	1	3	33.3
41st	Dickinson/Iron/ Menominee	4	23	17.4	1	1	100.0
42nd	Midland	10	44	22.7	0	3	0.0
43rd	Cass	6	22	27.3	3	5	60.0
44th	Livingston	11	52	21.2	1	3	33.3
45th	St. Joseph	2	21	9.5	0	3	0.0
46th	Crawford/Kalkaska/ Otsego	8	43	18.6	1	3	33.3
47th	Delta	1	7	14.3	0	1	0.0
48th	Allegan	8	38	21.1	0	1	0.0
49th	Mecosta/Osceola	3	17	17.6	1	4	25.0
50th	Chippewa/Mackinaw	3	15	20.0	0	0	0.0
51st	Lake/Mason	5	22	22.7	0	1	0.0
52nd	Huron	0	1	0.0	0	0	0.0
53rd	Cheboygan	3	16	18.8	0	1	0.0
54th	Tuscola	3	19	15.8	2	3	66.7
55th	Clare/Gladwin	2	7	28.6	0	0	0.0
56th	Eaton	8	44	18.2	1	7	14.3
57th	Emmet	0	7	0.0	0	0	0.0
TOTAL:		832	4,080	20.4%	199	581	34.3%

Source: Michigan Appellate Assigned Counsel System

Conclusion

While SADO has not met the 25% requirement for criminal appellate indigent assignments for many years, it has relieved local units of government from handling a large percentage of the more complex and time-consuming cases. The impact on each county varies, as shown in [Table 3](#). Current litigation ([People v Bulger](#)) regarding the right to appointed counsel for appellants who plead guilty at the trial court level could have an impact on the workload of SADO and MAACS roster attorneys. Until that case is resolved, pursuant to Michigan Supreme Court Rule, indigent criminal defendants who plead guilty are entitled to have their request for court-appointed counsel liberally granted. Any reduction to SADO will result in the counties' having to absorb the cost that would have otherwise been paid by the State.